IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT :

THE HONOURABLE MR. JUSTICE P.R.RAMAN
&
THE HONOURABLE MR. JUSTICE V.K.MOHANAN

WEDNESDAY, THE 28TH NOVEMBER 2007 / 7TH AGRAHAYANA 1929

RFA.No. 430 of 2005()

OS.967/2002 of PRL.SUB COURT,THRISSUR
.....

APPELLANT/PLAINTIFF

K.V.USHA, D/O.KOCHIKAPARAMBIL VELAYUDHAN
W/O.KALAPURAKAL SUBRAMANIAN, PERINJANAM VILLAGE-
DESOM, KODUNGALLUR TALUK.

BY ADV. SRI.G.SREEKUMAR (CHELUR)

RESPONDENT/DEFENDANT

GOPALAKRISHNAN,S/O.THEKINIYATH KOCHAVAN,
VALAPPAD VILLAGE-DESOM, CHAVAKKAD TALUK.

BY ADV. SRI.P.VIJAYA BHANU
SRI.P.SANTHOSH (PODUVAL)

THIS REGULAR FIRST APPEAL HAVING COME UP FOR ADMISSION ON 28/11/2007, THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:

P.R.RAMAN & V.K.MOHANAN, JJ.

R.F.A.NO.430 OF 2005

Dated this the 28th day of November, 2007

JUDGMENT

Raman, J.

This an appeal against the decree and judgment rejecting the plaint, O.S.No.967/2002 on the file Principal Sub Court, Thrissur. The suit of course, is of the year 2002. Judgment was rendered in 2004. Normally, there may not be any justifiable ground to be raised in this appeal against the judgment rejecting the plaint for non-payment of the balance court fee within the statutory period. But according to the appellant, after the institution of the suit, the defendant was set ex parte and ultimately the decree was passed. Subsequently, the application for setting aside the ex parte decree was allowed as unopposed by the plaintiff. It was thereafter that the matter was posted for framing issues. But so however the court below found that the issues have already been framed earlier and rejected the plaint on the ground of non-payment of the court fee. According to the appellant, she was under the impression that no issues were framed, especially when the matter was posted for framing issues, on the day on which the plaint

was rejected as per the impugned order. She also submitted that though an application for adjournment was made, no orders were passed thereon. The application for adjournment filed long prior to the order was passed has no relevance in deciding the question. However in the factual situation, we find that by giving an opportunity to the appellant for payment of the court fee no prejudice will be caused. In the circumstances, the appeal is allowed on the following terms:

(1) The entire balance court fee shall be paid within two weeks from today.

(2) An amount of Rs.3,000/- (Rupees three thousand) shall be paid by way of cost to the respondents by deposit in the court below or through the counsel.

(3) If any of the conditions is not complied with, the appeal will stand dismissed.

Issue urgent copy.

P.R.RAMAN,
Judge.

V.K.MOHANAN,
Judge.

kcv.